1950.

Examined

File No. S.DWR 3/50

Legal DEPARTMENT

A BRANCH

Subject:— Suits Dharwar

Civil Suit No. 343 of 1948

Tammappa Fakirappa Nandihalli -- Pltff.

Vs.

The Province of Bombay -- Defts.

For a declaration of the pltffs title to an open site in the village of Unkal, Taluka-Hubli, district-Dharwar.

1.12

S.DWR 3/1950

File No.

S.DWR 3/50

C O N T E N T S.

Legal Department File No. S. Dwr. 3/50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Dharwar C.S.No. 343 of 1948. T. F. Nandihalli pltff. V/S The Province of Bombay Deft. For a declaration of the pltffs. title to an open site in the village of Umhed.	1—28.

C/M

From. L. no 57/49 9-1

B.R. Mathad B.A.LL.B.
Off. Sub-Govt. Pleader Hubli

To, The District-Government-Pleader
Dharwar

Subject :- W.S. in L.C.S. 343 of the Hubli court-48

Sir,

The above suit was fixed for filing the W.S. on 7-7-1949. The application for adjournment was rejected. It is fixed for Ex parte hearing on 6-8-1949.

If the W.S. is not filed on or before 6-8-1949. the suit will

Reader 14/7/1949 Dist. Inc (C.S.)

be decided ex parte, against Government.

Please refer to your no. 529 dated 4-7-1949 for the details in the matter

Yours Faithfully
pp Illegible

Hubli
8-7-1949.

No. 570 of 15-7-49
Office of the Dist. Dharwar

Forwarded with Compliments to the R.L.A for favour of information and necessary action.

Reference to my No 529 d/4-7-49

Illegible
Dy. S. 14/7

SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
Pub No. 11018
Sub No. A-19-7-49
Secy

Subject:- Civil Suit No.343 of 1948 T.F.Nandihalli V/S The province of Bombay.

.....

No.L.N.D.A.P 197
Dharwar 16 -7-49

Letter

To

The Sub-Government Pleader
Hubli

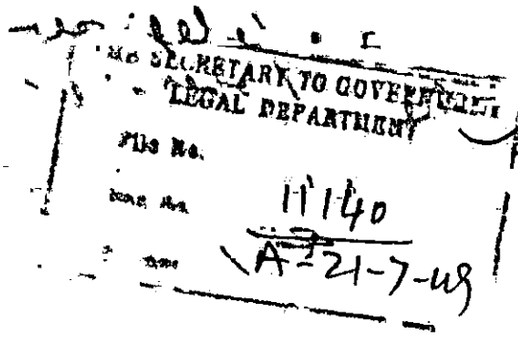
The case papers (from page 1 to 129) are sent herewith for preparing a report under rule 118 of the Law officer's rules which may please be submitted to R.L.A. through this office for sanctioning the defence of the suit.

FM. for Collector of Dharwar

Copy forwarded with compliments to the D.G.P. Dharwar with reference to his letter No.529 of 4.7.49

Copy submitted to the R.L.A. Bombay with reference to his No.7834 of 13.7.49.

FM. for Collector of Dharwar



Submitted

Please see the letter from the Sub. Govt. Pleader at p. 9 ante. Therein he states that the L.S. No 343 of 1948 has been fixed for ex-parte hearing on 6-8-1949. From the Collr's letter overleaf it appears that the papers have been forwarded to the Sub Govt. Pleader for preparing a report on 16-7-1949.

In view of the Sub-G.P.'s letter at p. 9 ante, he may be directed to file a W.S. on 6-8-49 and forward a copy of the same with the report under Rule 18 so that the an. applin. for amendment of the same may be made if necessary

For orders.

BLG
21/7

A.S. Send him a telegram to forward the papers at once.

RH
21/7

RR
21/7

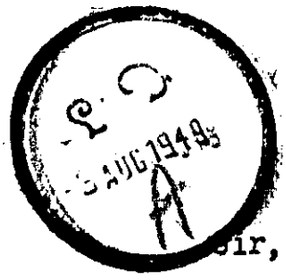
15-S

L.No.63 dated 26-7-1949.

Office of the Sub-Government pleader,

Hubli.

To,



The Remembrancer of legal Affairs,

Bombay.

Subject L. L.C.S.No.343 of 1948 of the the Hubli Court.

Sir,

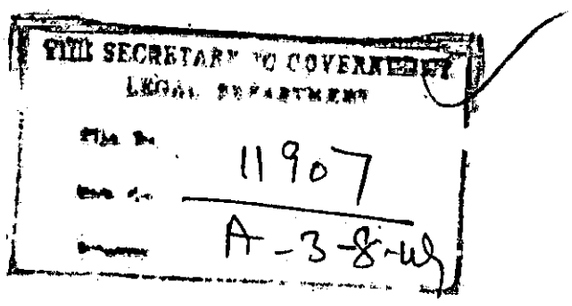
With reference to your Telegram No.8412 dated - 25-7-1949 I have to submit as under. I have herewith sent the case papers by today's post. The plaint copy and the notice under Section 80 C.P.C. are not in the case papers. They may be in the office of the Collector of - Dharwar. I have requested him by my letter No.62/49 - dated 26-7-1949 to send the same to you immediately if they are not already sent.

The case is fixed for exparte hearing on 6-8-1949 before which date the W.S. is to be filed. Hence I - humbly submit that the matter may be expedited. The W.S. may be sent to me before that date for filing the same in due time.

Yours faithfully,

Sub-Government, Pleader,

Hubli.



Submitted w.r.t. Sub-Dy. Supdt's letter overleaf

In pursuance of our telegram at p 13 ante, the Sub-Court, Bhadrak has forwarded the P/Os of Suit No. 843 of 1968. The copies of the plaint and notice of the suit under sec 80 of the C.P.C. which is presumably lying in the Collr.'s Office has not yet been received inspite of the fact that a copy of the telegram above referred was sent to the Collr. of Dhanbad also. The suit is fixed for exparte hearing on 6-8-1969 ~~at~~ before which date the W.S. has to be filed.

BG
3/6

A.S.

Impossible. Since a wire to the Collector ~~the~~ & to forward copies of plaint & notice. Addl. Govt. Pleader to move accordingly.

Sub-Dy. Supdt. What about the plaint. Are we to move Court to adjournment.

AG
3/7

Notice under section 80 under Civil Procedure Code.

To

The Collector of Dharwar,

D h a r w a r.

In the Court of the Civil Judge, Senior Division,

At Hubli.

Plaintiff:- Tammappa Pakirappa Nandihalli, Lingayat, age 50, agriculture, resident Unkal Dist Dharwar.

Against.

Defendant:1. Secretary, Provincial Government of Bombay.

2. The Collector of Dharwar Dist. Dharwar.

In this the plaintiff is serving with notice as under :-

1. The property in dispute is situate at Unkal and the following are its boundaries: To the East - Ningappa Cristi's open site; to the West - Gutter of waste water and beyond that Road; to the North - Gutter of waste water and ~~Road~~ Government open site. and to the South - Road.

2. The open site is in Unkal village in Hubli Taluka Dist. Dharwar. It originally belonged to one Ningappa Pakirappa Pyali and his ancestors. His family had been in wahivat of the open site from time immemorial till it was sold on 28-1-1903 to one Ningappa Tammappa Nandihalli an ancestor of the plaintiff's family. Since the sale it is in the possession of the family of plaintiff. Hence the site is in the possession of plaintiff and his predecessors-in-title prior to the sale in 1903 for many many years i.e for than hundred. Hence Government has no claim whatsoever upon this site Plaintiff is the real owner. Plaintiff and his predecessors-in-title have become owners by adverse possession

against Government, having been in possession of the site for more than 60 years

3. There was a dispute between the Collector of Dharwar and the present plaintiff since 1946 over this piece of open site as an encroachment by plaintiff. The plaintiff produced his title deeds in proof of his ownership and possession. But the D.D.C. I.Division Dharwar has declared that the site belongs to Government. Hence this suit that the site is of the ownership of the plaintiff and a declaration to the same effect be given and the Government is restrained from taking possession of the same.

4. Cause of action arose on 3-3-1948 when the D.D.C. declared the site as belonging to Government.

5. Property is in possession of the plaintiff and court fees are paid for the declaration and injunction under section 7 sub-clause (c) of the Court Fees Act. For jurisdiction and pleader's fees it is the same.

6. Plaintiff prays that a declaration be made that the suit site is of the ownership of the plaintiff and further prays that a permanent injunction be given to the Provincial Government or the Collector of Dharwar not to interfere with the peaceful enjoyment of the suit site by the plaintiff.

(b) Costs of the suit be awarded.

B S Patil (Kannada)
B A LL B Pleader
Hubli dist-
Dharwar

10 SEP 1948

Habib Civil Suit No
343 of 1948

This is a simple encroachment suit
It may be defended on the
lines of the defended suit.

RM
9/8/48

RLA 9/8

See R.T.? 10.8

10.8.49

B

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT

12420

A-12-8-49

10.8.49

1998
12-8-1949.

11
33
-29

IN THE COURT OF THE CIVIL JUDGE,
SENIOR DIVISION AT HUBLI.

Civil Suit No. 343 of 1948.

Tammappa Fakirappa Nandihalli, age 50, caste Lingayat, occupation Agriculture, resident of Unkal, Taluka Hubli, District Dharwar.	Plaintiff.
Vs.	
1. Provincial Government of Bombay 2. The Collector of Dharwar.	Defendants.

Following is the written statement of the defendants in this suit.

1. The Plaintiff's alleged title to the suit site is denied.

2. The allegations in paragraph 3 of the plaint that the suit-sites have been sold to the plaintiff's ancestor are not admitted. Government was not a party to that document and is not bound by it.

3. The suit site belongs to Government and the plaintiff has made an encroachment upon it. The Order made by the Prant Officer, Dharwar, is correct and binding upon the plaintiff. It is denied that the Plaintiff or his ancestor had any Vahivat of the open site from time immemorial.

4. It is, therefore, submitted that the suit fails and must be dismissed with costs.

District Government Pleader,

I District Government Pleader, do hereby

declare that what is stated in paragraphs 1 to 4 above is true according to the information received and believed to be true. This varification is made at on the day of 194 .

District Government Pleader,

Suits :

Hubli.

For a declaration of the plaintiff's title to an open site in the village of Unkal, taluka Hubli, district Dharwar.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 10095.

Bombay Castle, 5th September 1949.

Letter from the Collector of Dharwar, No. L.N.D.A.P. 197, dated the 1st August 1949—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.
Civil Suit No. 343 of 1948.

Tammappa Fakirappa Nandihalli ... ... Plaintiff ;

versus

The Province of Bombay ... ... Defendant.

Memorandum to the Sub-Government Pleader, Hubli, No. 9258, dated the 16th August 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

[P.T.O.

L Leg H 83—1

To

*The Revenue Department,
*The Collector of Dharwar,
The Sub-Government Pleader, Hubli (with two copies of the brief).

*With a copy of the brief.

No. of 1949.

Copy forwarded for information and guidance to

Subject. after issue
File in S. Dhar/50 (new)
1-2-50
SA
2nd
1/2

HUBLI CIVIL SUIT No. 343 OF 1948. 17

Chronological Statement of Facts.

This is a suit for the declaration of the plaintiff's title to an open site in the village of Unkal, taluka Hubli, district Dharwar. The disputed site is shaded " red " in the sketch at page 81 of the file.

2. In the inquiry held under section 37, sub-section (2) of the Bombay Land Revenue Code, the Prant Officer, Dharwar Division, passed an order declaring the site admeasuring 699·5 yards to be Government property.

3. The plaintiff gave notice of suit under section 80 of the Civil Procedure Code in September 1948, and on 18th November 1948 he filed the present suit in the Court of the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

The plaintiff's allegations regarding his alleged title to the suit property should be denied and he should be put to strict proof thereof.

2. The plaintiff apparently relies on the sale-deed of 29th January 1903 in support of his title. Government was not a party to that document and it cannot be held bound by any recitals therein, which can at best be regarded as admission in the plaintiff's own favour. Besides the Prant Officer has pointed out that the sale-deed is not *bona-fide* and does not prove the title of the plaintiff's father. The Prant Officer also disbelieved the evidence of the plaintiff's witnesses. It also appears that the suit land was the subject of another inquiry in 1933 when it was encroached upon by one Fakirappa Kuttkoti and at that time also it was held to be Government property.

3. For the above reasons it should be urged that the suit fails and must be dismissed with costs.

S Dwr 2/50
(New file)

Copy applied for on 13th April 1950
Sd/- C.O.E
Copy ready for Delivery on 23-4-1950
Sd/- C.O.E
Copy delivered on 27-4-1950
Sd/- C.O.E

— x —

On Ten annas Court fee Stamp

ಕೋರ್ಟ್ ಆ

ಆ.ಅಲ್ಲಾಬಿ. 383/8V.

(1) ಆಮ್ಲಕ್ಷಿತ್ತ ಪಿರೆದಾಬಿಕ್ಕೆ ಸಂಬಿ ಜ್ಯಕ್ಕೆ ಸರಿ.
ಮಂಡೀಲ್ ಬಾಳ್ಳ ಅಲ್ಲಾಬಿ
ಮಿಂಬಳ್ಳಿ

(1) ದಿ ತಿಳ್ಳಿಲಿ ಟಿಕ್ ಕೆಲ್ಲಿ.

ದಾವಾ ಕಾಗದಾಲು.

ವಿಶೇಷ ಚಾವಿಂಬು ಮಂಜಾಬುಲ ಅಬಿಳ್ ಎಬಿಬಿದ್ದೆ . ನೀವು ದಾವೆದಲ್ಲಿ ಇಂಥ ನಿರ್ದಿಷ್ಟ ಕಡೆಯಿಂದ ಬಂದ ನಿಂದಿಸಿಬಂದಾಗ್ ಕಾರಣ ಅನಿವೆ ರಿಯಲ್ ಮಂಜಾಂದಾ ~~ಸ್ಥ~~ ದಾವೆದ ಕೆಲ್ಲಿಬ್ಬು ನಡ್ಡಿ ಎಂಬುವಂತೆಲ್ಲಾ ಆಕ್ಷೇಪಣಾರ ಬಿಂದಾ ಬರಲಿದೆ ಕಾರಣ ನೀವು ದಾವೆದಲ್ಲಿ ಇಂಥಾ ನಿರ್ದಿಷ್ಟ ಮಂಜಾಬುಲ ಎಬಿಬಿದ್ದೆ ಎಬಿಬಿದ್ದೆ ಕಾಲಬುಂಬ ನಿಲ್ಲಿ ತಿಂಗಳ ತಿಂಗಳ ಅಕ್ಷರ ಕೆಲಂಡು ನಿರ್ದಿಷ್ಟಾಂಬುದಿ ಬಿಬಿಬಿದ್ದೆ ಎಬಿಬಿದ್ದೆ ದಾವೆ ಮಂಜಾಬುಲ ಎಬಿಬಿದ್ದೆ ಎಬಿಬಿದ್ದೆ ಕಾಲಬುಂಬ ನಿಲ್ಲಿ ತಿಂಗಳ ತಿಂಗಳ ಅಕ್ಷರ ಕೆಲಂಡು ನಿರ್ದಿಷ್ಟಾಂಬುದಿ ಬಿ

ದಾವಾ ಪತ್ರದ ಪ್ರಕಾರ ಕೊಡಬೇಕು ಸಿವಿಲ್ ಕಾರ್ಯವಿಧಿ
ಬಗ್ಗೆ ಮಿನಹಾ ದಾವಾ ಫಾಲ್ತಿ ಪತ್ರವಾಗಿ
ಕೊಡಬೇಕು. ಮುಟ್ಟು ಈ ದಾವೆ ಪತ್ರ
ಪ್ರಕಾರ ಕೊಡಲಾಗಿ ಮೂರು ತಿಂಗಳಿಗೆ. ಮುಟ್ಟು.
ಪ್ರತಿವಾದಿಯವರಿಗೆ ಖರ್ಚು ಕೊಡಿಸಿ ಬಗ್ಗೆ
ಮೇಲಾ ಮಿಸಾಲಿ- ದಿ ೧೦-೪-೫೦
ಸಹಿ— ಮಲ್ಲಪ್ಪ ಶಿವಪ್ಪ ಶಿರಂಚಿಕೆ. ಸಾಹೇಬ್ರು
Sd/— XXX
Pleader

—×—

The suit is more than an year old suit. The plaintiff has not produced the order ofnthe Assistant Collector uptill today though he challenges the order itself. Now after the cross-examination of plaintiff is over, he puts in this application for withdrawal. This is practically after the case is over. Hence the costs of the defendants may be awarded, in case he is allowed to withdraw the suit.

11-4-1950. Sd/- B.R.Mathad,
Sub-Govt. Pleader.

Heard Pleaders. Permission granted to withdraw the suit with liberty to file a fresh suit.

Plaintiff to pay the costs of the defendant before the filing of the fresh suit. This is a condition precedent to the filing of the fresh suit.

Plaintiff do bear his own costs.

11-4-1950. Sd/- S.M.Bhoj,
Civil Judge, S.D., Hubli.

True Copy
Sd/- x x x x
Clerk of the Court.

L.C.Suit No.343 of 1948.

Exh.No.1.

(Court Fee Stamp worth Rs.6-4-0 affixed).

Presented on 18th November 1948

Sd/- B.M.Dharwarkar,

Clerk of the Court.

In the Court of the Civil Judge, Senior Division, at Hubli.

Plaintiff. Tammappa Fakirappa Nandihalli, age 50, caste Lingayat, Occ. Agri. resident of Unkal, Taluka Hubli, Dist. Dharwar.

against.

Defendant. 1. Secretary, Provincial Government of Bombay.

2. Collector of Dharwar, Dist. Dharwar.

Claim Rs.6,-0-0

In this, the plaintiff begs to state as under:

1. The property in dispute is situated at Unkal in Hubli Taluka and the following are its boundaries

To the East :- Ningappa Crost's open site.

To the West :- Gutter of waste water and beyond that public road.

To the North:- Gutter of waste and Government open site.

To the South:- Road.

2. Notice under section 80 of the C.P.C. has been given of the intended suit against Government on Secretary Provincial Government, Bombay and Collector of Dharwar. The notices were sent by post

on 9-9-1948. They have been served on the Collector of Dharwar on 11-9-1948 and on the Provincial Government on 13-9-1948.

3. The open site in in Unkal village in Hubli Taluka District Dharwar. It originally belonged to one Ningappa Fakirappa Byali of Unkal and his ancestors. The family had been in wahivat of the open site from the time immemorial till it was sold on 29-1-1903 to one Ningappa Tammappa Nandihalli, an ancestor of the plaintiff's family. Since the sale, it is in the possession of the plaintiff's family. Hence the site is in possession of plaintiff and his predecessors-in-title prior to the sale in 1903 for many, many years, i.e. for more than 100 years. Hence the Government has no claim whatever upon this site. Plaintiff is the real owner. Plaintiff and his predecessors-in-title have become owners of the open site by adverse possession against the Government

4. There was a dispute between the Collector of Dharwar and the present plaintiff in 1946 for this piece of open site as an encroachment by plaintiff. The plff. produced his title deed in proof of his ownership and possession. But the D.D.C. I Division, Dharwar declared that the site belongs to theb Government. Hence this suit is filed that the site in question be declared to be of the ownership of the plaintiff, and the Government be restrained from taking possession of the same.

5. Cause of action for the suit arose when the order of the D.D.C. I Division declared that the site belongs to the plaintiff i.e. on or 31-3-1948.

6. The property is in the possession of the plaintiff and Court fees are paid for declaration and injunction under section 7 (M.C.) of the Court Fees Act. For jurisdiction and pleader's fees it is the same. This Court,

has jurisdiction to try this suit as the property is situate within the jurisdiction of this Court.

7. The plaintiff prays that a declaration be made that the suit site is of the ownership of the plaintiff and further prays that a permanent injunction be given to the Provincial Government and the Collector of Dharwar not to interfere with the peaceful enjoyment of the suit site by the plaintiff.

b. The Provincial Government or the Collector or both be ordered not to execute the order of the D.D.C. I Division, Dharwar regarding the suit site and take possession from the plaintiff.

c. And the costs of this suit be awarded to the plaintiff.

Dated 18-11-1948 Sd/- Tammappa Fakirappa Nandihalli
(In Kannada).

Sd/- B.S.P.Kerimani,
Pleader.

In this, I, Tammappa Fakirappa Nandihalli, age 50, caste Lingayat, Occ. Agri. resident of Unkal Taluka Hubli, District Dharwar, do hereby state on solemn affirmation that what is stated above is true to the best of my knowledge and belief and I believe the same to be true.

Date 18-11-1948. Sd/- Tammappa Fakirappa
Nandihalli (Kannada)

Drafted and Presented
by
Sd/- B.S.P.Kerimani
Pleader.

Examined and particulars ordered to be entered in the Register of Suits.

18-11-1948. Sd/- B.M.Dharwarkar.
Clark of the Court.

O r d e r.

Issue summons to defendants for settlement of issues. Ret. on 24-1-1949. Sd/- S.M.B.
16-12-1948. C.J.S.D.

Suit withdrawn with liberty to file a fresh suit. Plaintiff do bear the defendant's cost. Vide Exh.40.

11-4-1950. Sd/- C.M.Bhoj,
Civil Judge, S.D.

ವೆಚ್ಚದ ವಿವರಗಳು

25

ಜಮೆ ಮಾಡಿದವರು ವೆಚ್ಚ		ಪಡೆದುಕೊಂಡವರ ವೆಚ್ಚ.	
1 ಅಡಿಲರಾಗಿ ಸಲ್ಲಿಸಿದ್ದು	6-4-0	1 ಸಾಮಾನ್ಯ ಕಾನೂನಿಗಾಗಿ ಸಲ್ಲಿಸಿದ್ದು	6-4-0
2 ಮಾಮೂಲಿ ಸಾಕ್ಷಿಗಳ ಬಿಟ್ಟಿ	0-10-0	2 ಸಾಕ್ಷಿದಾರರಿಗೆ ಕೊಟ್ಟಿದ್ದು	1-12-0
3 ಪ್ರಾಮಾಣಿಕ ಕಾಗದಗಳಿಗೆ	3-7-0		
4 ಸಾಕ್ಷಿದಾರರಿಗೆ ಕೊಟ್ಟಿದ್ದು	4-0-0	3 ಪಾಸ್ಟು ಸೀಲಿಗಾಗಿ	2-0-0
5 ವಿಲ್ಲು ತಕ್ಕ ಶೀಲ	15-0-0	4 ಪ್ರೀ ತಕ್ಕ ವಿಲ್ಲು ಪಿಟಿಷನ್	15-0-0
6 ಪ್ರಾಸೆಸ್ಸು ಸಾಮಾನಾದ್ದು	6-0-0	5. ಪ್ರಕಟಣೆ ಸಾಮಾನ್ಯ	5-8-0
7 ಪ್ರಕಟಣೆಯಿಂದ ಬಂದ	26-0-0		30-8-0
ಬಂದ	61-13-0		
ಸಾಲವಾಗಿ ಇದ್ದರ ಮೊತ್ತ	1-4-0	ಸಾಲವಾಗಿ ಇರುವ ಮೊತ್ತ	4-6-0
ಬಾಕಿ	60-9-0	ಬಾಕಿ	26-2-0

ಈ ಕೆಳಗಿನ ಸಾಕ್ಷಿಗಳು ನಿಮ್ಮ ಸಮಕ್ಷಮ ನಮ್ಮ ವಿರುದ್ಧವಾಗಿ ಸಾಕ್ಷಿ ಹೇಳಿದ್ದಾರೆ ಅವರನ್ನು ನಾವು ವಿಚಾರಣೆ ಮಾಡುವುದಕ್ಕೆ ಬಯಸುವುದಿಲ್ಲ ಅವರು ಹೇಳಿರುವ ವಿಷಯಗಳು ಸರಿಯಾಗಿದೆ ಎಂದು ಒಪ್ಪಿಕೊಳ್ಳುತ್ತೇವೆ.

Sd/- SN/ Bhoja
-/-

Sd/- xxx

Sd/- xxx

ದಿನಾಂಕ 21-4-50

Sd/- BR Mahad
Sd/- P Adv
Plead for Defendants.

True Copy
Sd/- xxx
Clerk of the Court

Suits.

Hubli.

For a declaration of the plaintiff's title to an open site in the village of Unkal, taluka Hubli, district Dharwar.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 8653
Bombay Castle, 23rd June 1950.

Read Government Department No.10095, dated the 30th September 1949.

Letter from the Sub-Government Pleader, Hubli, No.L68, dated the 13th April 1950, stating that

In the Court of the Civil Judge(Senior Division), Hubli.
Civil Suit No.343 of 1948.

Tammappa Fakirappa Nandihalli. .. .. .. Plaintiff;

versus

The Province of Bombay. .. .. Defendant.

the suit noted in the margin was decided by the Civil Judge, Senior Division, Hubli, on 11th April 1950, when the following order was passed :-

" Suit withdrawn with liberty to file a fresh suit. Plaintiff do bear the defendant's cost."

Letter from the Sub-Government Pleader, Hubli, No. L.84, dated the 10th June 1950, forwarding uncertified copies of the judgment and decree.

Resolution :- The result of the suit is recorded.

By order of the Governor of Bombay,

original

R.M. Mehta,
Assistant Secretary to Government.

To

The Revenue Department,
The Collector of Dharwar.

Issued 23/6

HSP 20/6

Subd for sign
AC 21/6